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TÍTULO: Cuestiones acerca de la resolución de disputas ambientales.

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RESUMEN: Hoy, el estado del medio ambiente en el mundo preocupa tanto a científicos como a las figuras públicas. La seguridad ambiental de la mayoría de los países, incluida la Federación Rusa, es de gran relevancia para la investigación científica, dado el bajo grado de elaboración teórica de las normas que rigen los litigios en casos relacionados con el medio ambiente; luego, el estudio de cuestiones procesales relacionadas con el derecho ambiental es extremadamente importante, ya que es un problema principal la inconsistencia de la práctica judicial en temas fundamentales de disputas ambientales. Ignorar las características distintivas de procedimientos judiciales en esta categoría de casos conducirá inevitablemente a la aparición de errores de procedimiento que impiden la protección de los derechos y libertades de los ciudadanos en la esfera ambiental.

PALABRAS CLAVES: Disputas ambientales, corte, derecho, derechos humanos, ecología.

TITLE: Questions about resolving environmental disputes.

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ABSTRACT: Today, the state of the environment in the world is of concern to both scientists and public figures. The environmental safety of most countries, including the Russian Federation, is being of high relevance of scientific research, given to the low degree of theoretical elaboration of rules governing litigation in cases related to the environment; then, the study of procedural issues relating to environmental law is extremely important, being a main problem the inconsistency of judicial practice on the fundamental issues of consideration of environmental disputes. Ignoring the distinctive features of judicial proceedings in this category of cases will inevitably lead to the appearance of procedural errors that impede the protection of rights and freedoms of citizens in the environmental sphere.

KEY WORDS: Environmental disputes, court, law, human rights, ecology.

INTRODUCTION.

It is important to note that domestic legislation provides for the consideration of disputes related to legal relations in the field of ecology both in the framework of the civil and arbitration process, and in the framework of the criminal and administrative process. However, the rules of law governing the criminal and administrative process are more imperative; therefore, in these processes there is less uncertainty than in civil and arbitration. Thus, a more interesting object of study is the features of the consideration of disputes related to legal relations in the field of ecology in the civil and arbitration process.

Features of the modern litigation for the consideration of environmental disputes begin primarily with the definition of jurisdiction. As you know, disputes related to environmental legal relations are considered by courts of general jurisdiction and arbitration courts. The main problem, in this case, is the delimitation of jurisdiction between courts of general jurisdiction and arbitration courts. At the same time, an additional negative factor is that the delay in the consideration of environmental disputes as a result of the issuance of illegal decisions by the courts to refuse to take the case leads to an untimely solution of the environmental problem, and consequently, to further environmental degradation.

Environmental disputes are one of the most difficult categories of cases heard in courts of general jurisdiction and arbitration courts. This is primarily due to the fact that the very concept of "environmental dispute" is complex and can arise not only from violations of the Law on Environmental Protection, but also cover several branches of law at once: forestry, land, environmental, water, air, civil, administrative, criminal and some others.

Traditionally, environmental disputes are considered as disagreements regarding the assessment of decisions made and implemented in the field of environmental relations in the process of economic, managerial and other activities, as well as about compensation for harm caused to the environment, including humans.

Such a large-scale list of objects of judicial protection in essence of one legal dispute arising from an environmental legal relationship requires the formation of special procedural rules for going to court, the procedure for considering and resolving relevant claims. In particular, such claims may arise from various environmental and legal institutions within which a dispute arose, environmental audit, environmental impact assessment, payment for negative environmental impact, environmental impact assessment and others.

Accordingly, the subjects of a lawsuit can be completely different persons - from a representative of an authorized body that carries out environmental supervision (the Federal Service for Supervision of Natural Resources, the Federal Agency for Fisheries and their territorial divisions, etc.), to an individual or legal entity activities affecting the environment, or affected by any violation of environmental laws (Solntsev, 2013). According to the direction of the controversial environmental legal relationship, environmental claims can arise from environmental legal relations of nature and from environmental legal relations of a property nature.

DEVELOPMENT.

In accordance with Art. 76 of the Law on Environmental Protection of the Russian Federation, disputes in the field of environmental protection are resolved in court in accordance with the law. The legislator unequivocally approached the jurisdiction of this type of disputes because of their complexity and significance not only for a specific person, but also for an indefinite number of people. Pre-trial settlement of such disputes is also not provided.

In paragraph 30 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of October 18, 2012 No. 21 “On the application by the courts of the legislation on liability for violations in the field of environmental protection and nature management”, the attention of the courts is drawn to the fact that the basis for distinguishing jurisdiction of disputes arising from environmental legal relations, lies the substantive criterion. Despite the subjective composition of persons applying for the protection of peoples' rights to a favorable environment, reliable information about its condition and compensation for damage caused to their health or property by an environmental violation, including property requirements (on compensation for environmental damage), such cases considered in the courts of general jurisdiction (Solntsev, 2014).

Such at first glance, the unambiguity in resolving issues of jurisdiction of environmental disputes is not entirely true from the point of view of expediency and multidimensionality of these categories of cases. So, it is quite logical if individual entrepreneurs and legal entities challenge the decisions of the competent authorities to hold them accountable for non-compliance with environmental and sanitary-epidemiological requirements of the law in arbitration courts, or disputes about excessively levied environmental fees from organizations also, based on the logic of current legislation, belong to the jurisdiction arbitration courts.

Today, we cannot ignore, in addition to the Decree of the Plenum of the Supreme Court of the Russian Federation of October 18, 2012 No. 21, the legal positions of the Presidium, which in two ways appeal to issues of jurisdiction of environmental disputes. So, in the Decree of the Supreme Court of the Russian Federation of July 15, 2014 No. 18-KGPR14-58, the court concluded that the dispute was subject to jurisdiction on the statement of the prosecutor to an individual entrepreneur regarding the demolition of an unauthorized building due to violations of environmental legislation (there is no state environmental review) (Savelyeva, 2017).

Already in 2015, in the Review of Judicial Practice of the Supreme Court of the Russian Federation No. 1, the opposite approach of the Supreme Court of the Russian Federation (question No. 9) regarding jurisdiction was published. One of the cases dealt with compensation for harm caused to the environment, in connection with which the following conclusions were made:

- If the claim for compensation for harm caused to the environment by legal entities or individual entrepreneurs in the implementation its types of economic activity, including those listed in paragraph 1 of Art. 34 of the Federal Law "On Environmental Protection in the Russian Federation", it follows from the economic relations of these entities, these requirements by virtue of the rules of distribution of jurisdictional powers of the courts established by the procedural legislation are subject to consideration by the arbitration court.

- If environmental damage was caused by the listed entities not in connection with their economic activity, then claims for its compensation are subject to consideration in the courts of general jurisdiction.

The latter option is closest to existing realities, however, of course, such a problem violates the uniformity of application of procedural legislation and should be eliminated.

In addition, it seems that environmental disputes cannot and should not be resolved through mediation or arbitration due to the apparent publicity of the stated requirements affecting the interests of the state, society, and a particular person. In particular, such an approach was reflected in the Decree of the Constitutional Court of the Russian Federation of January 15, 2015 N 5-O "On the refusal to accept for consideration a society's complaint with Forest Group limited liability for violation of constitutional rights and freedoms by certain provisions of Articles 1, 24, 61, 74, 81, 82, 83, 101 of the Forest Code of the Russian Federation, clause 2 of Article 1 of the Federal Law "On Arbitration Courts in the Russian Federation" and article 26.12 of the Federal Law "On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation". In accordance with the interpretation of these norms, the constitutional control body unequivocally rejected the jurisdiction of disputes under leases of state and municipal forest plots to arbitration courts.

Other important features of the consideration of environmental disputes include evidence. As rightly notes A.K. Mukhametov, the subject of evidence is primarily aimed at the existence of an environmental legal relationship in the form of a negative impact on the natural environment through harm to natural components (Mukhametov, 2016).

It was said above that there are a lot of categories of environmental claims. In this regard, the subject of proof for each of them cannot be identical. The interindustry nature of claims aimed at protecting the right to a favorable environment determines a voluminous list of facts to be proved in each

particular case (Kalamkaryan, 2012). However, the basic element in the system of material and legal grounds for such a claim is the establishment of a harmful effect on the environment or its absence within the limits prescribed by law.

Results.

The second most interesting feature of the consideration of disputes related to legal relations in the field of ecology in the courts is the question of the limitation period for this category of cases. Considering this issue, it is necessary to understand that disputes related to legal relations in the field of ecology are heterogeneous and the time limits for them vary depending on the requirements; for example, to recover fees for negative environmental impacts, the general limitation period provided for in Art. 196 of the Civil Code of the Russian Federation, while the requirements for compensation for harm caused to the environment apply a special limitation period of 20 years, established by paragraph 3 of Art. 78 of the Federal Law "On Environmental Protection in the Russian Federation". Obviously, the most interesting are precisely the special limitation periods. In particular, discussions are ongoing about the aforementioned period of 20 years. On the one hand, the current judicial practice confirms the advisability of introducing just such a period. However, in the legal literature this period is often criticized as being too short. In support of this position, it is argued that violations of environmental rights in the vast majority of cases are ongoing. Moreover, when considering this issue, it is necessary to take into account state policy aimed at protecting the country's ecology.

Thus, it seems reasonable not to extend the statute of limitations to compensation for environmental damage. It should also be noted cases when the statute of limitations for certain categories of environmental disputes is unreasonably small. For example, the deadline for filing a claim for damages and harm caused by radiation exposure to property or the environment is set at three years from the day when the person found out or should have known about the violation of his right.

Obviously, in this case the limitation period is shorter than in the case of causing the environment to the environment, not associated with radiation exposure. In this case, the question arises of the rationality and justice of the above rule of law (Anisimov, 2011). Given the scale, duration and irreversibility of the harm caused by radiation exposure, it would be reasonable to at least equalize these terms. Thus, one of the main features of the consideration of disputes related to legal relations in the field of ecology is the heterogeneous statute of limitations.

Touching upon the issues of international environmental disputes, scientists will certainly note their specificity in comparison with other types of international disputes. In this regard, A. Romanova warns that everyone who analyzes the concept of "international environmental dispute" runs the risk of falling into a methodological trap (Romanova, 2008). The fact is that, from the Stone Age to the present day, the era of the information society, most international disputes have an environmental component, as they relate to the distribution of control over natural resources (mineral resources, fish stocks, land, as such). In this connection, a reasonable question arises: are there any environmental disputes in their pure form, if most international disputes to one degree or another contain an environmental aspect?

In this context, it is appropriate to cite the following judgments of Solntsev, A.M. (Solntsev, 2014) Environmental issues are objectively integrated into the context of other global problems, and at some point, it may justifiably arise that environmental interests have no independent value. Professor Abashidze, A.Kh., considers this problem from the perspective of such a phenomenon as the greening of international relations (Abashidze, 2013). The inclusion of environmentally-friendly norms in sources traditionally related to other branches of international law often occurs due to established tradition or for reasons of convenience and does not expand the subject area of such industries. At the same time, the definition of "international environmental dispute" can be rigorously and consistently

outlined, but there is a great chance that a closed and autonomous definition will be created that cannot be used outside the context within which it was defined.

An international environmental dispute is a confrontation of legal arguments or interests of subjects of international rights, which takes the form of an opposing specific requirement regarding anthropogenic changes in ecosystems that have a negative impact on people and lead to the depletion of natural resources.

It seems to us that international environmental disputes in practice can be both pure (the Trail Smelter case) and international disputes with an environmental component (the Gabchikovo – Nadyamarosh case, the Volga case). The latter type of international disputes is sometimes difficult to distinguish from other types of international disputes, which is due to the indicated complexity in identifying and separating environmental disputes into a separate category (Anisimov, 2011).

Today, there are about 50 different international judicial and quasi-judicial institutions, for example, the UN International Court of Justice, the International Tribunal for the Law of the Sea, the Permanent Court of Arbitration, the WTO Dispute Resolution Body, the EU Court, etc.

International environmental disputes have been and are being considered in the framework of both arbitration and international courts.

Among them, there are a number of international forums adapted for resolving international environmental disputes: the UN International Court of Justice and the International Tribunal for the Law of the Sea, where special chambers for resolving environmental disputes were created in 1993 and in 2002, respectively; Permanent Chamber Arbitration court (PPTS); WTO Dispute Resolution Body; Court of Justice of the European Communities.

The scientific community has long discussed the problem of creating a special International Environmental Court. In 1994, the International Court of Environmental Arbitration and Reconciliation was established in the form of an international non-governmental organization. In July

1993, the Chamber for Environmental Matters was established at the UN International Court of Justice.

Analyzing the trend of peaceful settlement of disputes, international judicial institutions pay particular attention to themselves. The resolution of international environmental disputes has led to changes in the organization and activities of existing international judicial institutions, and has also led to the emergence of new means of resolving and preventing disputes. Given the fact that environmental damage is difficult to repair (and sometimes almost impossible), the prevention of transboundary environmental damage and related environmental disputes is of great importance in international environmental law.

Summarizing, we can note some features of this settlement mechanism: the difficulty in implementing decisions of the judiciary; the vagueness of the definition of an environmental dispute and its approaches in international legal acts gives rise to problems in the implementation of the judicial mechanism; the use of the mechanism allows to identify gaps and conflicts in international law.

However, recently in connection with the development of alternative dispute resolution procedures, even at the international level, international quasi-judicial procedures for the settlement of international environmental disputes have gained particular popularity. Although their decisions are not binding on the parties, the very existence of such procedures strengthens and enhances the effectiveness of international law as a whole and strengthens the doctrine of the rule of law. An example of the existence of such procedures and bodies can be called the NAFTA Commission on Environmental Cooperation, as well as the so-called Chinese “Environmental Diplomacy” course. In addition, the use of alternative procedures for resolving environmental disputes has recently been actively discussed in science. As an alternative litigation, alternative dispute resolution mechanisms may be more appropriate to consider environmental disputes, as environmental litigation is often complex, time consuming and expensive. Alternative methods of resolving environmental disputes

offer certain advantages, such as reducing judicial backlog, saving time and costs, flexibility, more control by the parties over the termination procedure, lack of national prejudice, etc.

An analysis of the situation showed that international environmental law also uses the "non-compliance procedure", which is a kind of control procedure for ensuring compliance by states with international legal obligations and an important mechanism for preventing environmental disputes regarding non-compliance with the provisions of various international environmental agreements (IEA). "Non-compliance procedures", in contrast to judicial means, are considered "friendly" means of resolving international disputes, since they are preventive in nature and involve not only the immediate parties to the dispute, but also all parties to a multilateral agreement.

CONCLUSIONS.

The above allows us to conclude that there is a need for further study of the procedural features of the consideration of environmental disputes, a systematic study of various types of environmental claims, improvement of legislation in this area, which contributed to increasing the efficiency of the administration of justice and the enforcement of judicial acts.

The foundations of state policy in the field of environmental development of Russia for the period up to 2030, approved by the President of the Russian Federation on April 30, 2012, provide for the development of market mechanisms, business and entrepreneurship, supervision and control, strengthening of legal, social, moral responsibility in the field of environmental protection.

On April 19, 2017, the President of the Russian Federation approved the Environmental Security Strategy of the Russian Federation for the period up to 2025, which aims to become the basis for the formation and implementation of state policy in the field of environmental safety at the federal, regional, municipal and industry levels, which list global, external and internal environmental challenges, priority areas, including improving legislation in the field of environmental protection and nature management, as well as the institutional system for environmental safety (which, in our

opinion, cannot be part of the further enhancement of the role of the judicial system continues to improve).

International environmental cooperation, familiarization with the environmental activities of Western countries has increased the interest of Russian lawyers in the role of judicial systems in protecting rights and ensuring the fulfillment of duties in the natural sphere, their judicial practice, the procedure for considering environmental cases in courts, organizing litigation, disseminating lawsuits of citizens and their associations about the inaction of environmental institutions and law enforcement agencies.

Thus, the role of the judicial system in ensuring the environmental safety of a person, society, and the state is growing due to the advantages of the courts in the form of independence, openness, objective implementation of legal proceedings on the basis of the adversarial and equal rights of the parties in solving relatively new, rather complex and complicated environmental problems.

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